

**Before the
Federal Communications Commission
Washington, D.C. 20554**

_____)	
In the Matter of:)	
)	
Preserving the Open Internet)	GN Docket No. 09-191
)	
Broadband Industry Practices)	WC Docket No. 07-52
)	
_____)	

To: The Secretary

COMMENTS OF BROADCAST MUSIC, INC.

Broadcast Music, Inc. (“BMI”) hereby submits these comments in response to the Notice of Proposed Rulemaking issued by the Federal Communications Commission (“Commission”) on October 22, 2009 in the captioned proceeding (“NPRM”). Herein, BMI raises general concerns about the Commission’s proposed “net neutrality” rules, and reserves the right to respond on reply to the comments submitted by other parties in this proceeding. As set forth below, BMI’s principal concern is to ensure that any net neutrality rules adopted by the Commission do not have any unintended adverse impact on the ability of copyright licensing organizations to protect the copyright interests of the songwriting and publishing communities. Specifically, BMI believes that the Commission should not adopt any non-discrimination rules for Internet Service Providers that have the effect of preventing them from assisting copyright owners to monitor and police the rampant infringement of music copyrights on the Internet. In this regard, BMI supports in general terms the comments filed by the Songwriters Guild of America (“SGA”).

I. BMI

BMI is a music performing right licensing organization, founded by broadcasters in 1939. Approximately 400,000 songwriters, composers, and music publishers affiliated with BMI grant BMI the non-exclusive right to license the non-dramatic public performing right in their musical works under section 106(4) of the Copyright Act, 17 U.S.C. § 106(4). BMI's repertoire covers the entire range of musical styles, and consists of approximately 6.5 million musical works, including thousands of foreign works that are part of BMI's repertoire as a result of reciprocal representation agreements with over 80 foreign performing rights societies.

BMI issues performing rights licenses to music users, collects license fees from them, and distributes royalties to its affiliated songwriters, composers, and music publishers. BMI's licensees include hundreds of Internet web sites, service providers and music services, as well as approximately 1,300 commercial local television stations, over 10,000 commercial radio stations, commercial music services, concert halls, concert promoters, colleges/universities, restaurants, nightclubs, and airlines. BMI operates on a non-profit-making basis. After deducting for its overhead and reasonable reserves, BMI distributes all of its license fees as royalties to its affiliates based on the performances of the affiliates' musical works. BMI monitors the performance of musical works on radio networks and stations, television networks and stations, Internet web sites and music services, live concerts, background music services and a variety of other music using sources. BMI-affiliated songwriters, composers, and music publishers depend on the BMI royalties they receive for their livelihoods.

II. Potential Adverse Affects of a “Non-discrimination” Rule

BMI’s chief concern, echoing the comments contained in SGA’s filing, is that the broad non-discrimination rule proposed in paragraph 104 of the NPRM could have the unintended consequence of making it difficult, if not impossible, for web sites and Internet Service Providers to adopt copyright filtering technologies and other technological means to control the widespread transmission of unauthorized works online. Piracy afflicting the music industry online comes in a variety of types. One example is unlawful peer to peer “file sharing.” Another example is “user generated content” that appears on widely popular social networks such as Youtube.com. In most cases it seems that the solution to piracy will involve cooperation between ISPs and copyright owners, particularly in the adoption of technology.

BMI recognizes that the non-discrimination rule proposed by the Commission is intended to apply only to “lawful content.” However, “lawful content” is not defined. This could very well result in a multitude of lawsuits to determine what “lawful content” is. The rule as presently constructed could be construed to outlaw implementation of the very technologies that an ISP might rely on in order to determine whether a given work is “lawfully” licensed for transmission over the Internet. BMI surmises that the ability for an ISP to conduct “reasonable network management” under the proposed rules may not provide sufficient guidance for an ISP to effectively monitor unlicensed copyright content online to the fullest extent necessary. It is possible that this rule could be interpreted to enable ISPs to protect their own interest in the integrity of the pipeline, but not the interests of third-party copyright owners, with whom they have contracted to protect. Under the proposed rules, a college or university (which could be considered an ISP) could be prevented, on the grounds of discrimination, from seeking to prevent

extremely heavy bandwidth transmissions, even though they are likely to be unlicensed and interfere with network management. NPRM at par. 137. Moreover, it would be impossible for the college/university to demonstrate that there were no licensed transmissions in the blocked content.

As pointed out in the SGA submission, digital piracy has done great damage to the songwriting profession and is having an adverse effect on the music industry. The music created by U.S. creators is desired by every country around the globe. The music industry generates a positive balance of trade. This is an area that must be protected. If piracy is permitted to flourish because ISPs cannot take action in fear of being accused of discrimination, the result will be a crippling of the music industry. Writers will not be able to make a living writing music and the music industry as we know it today will become much less robust.

In summary, BMI requests that the Commission include protection of copyright as an additional “national priority” in addition to “education, health care and energy efficiency” (NPRM at par. 15) and “law enforcement, public safety and homeland and national security” (NPRM at par. 119). The Commission says that it is merely seeking to guarantee users their right to “access” content. However, if federal law overly favors users’ access rights at the expense of the economic rights of content creators, the Internet will not reach its full potential because there will eventually be little high-quality creative material for users to seek to “access” at all.

Respectfully submitted,

BROADCAST MUSIC, INC.

By: /s/ Marvin L. Berenson
Marvin L. Berenson
Senior Vice President and General Counsel
Joseph J. DiMona
Vice President, Legal Affairs
Broadcast Music, Inc.
320 West 57th Street
New York, New York 10019

Counsel:

Howard M. Liberman
Michael J. Remington
Mark B. Denbo
Drinker Biddle & Reath LLP
1500 K Street, NW
Suite 1100
Washington, DC 20005
(202) 842-8800

January 14, 2010